

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	
)	CRIMINAL NO. _____
MONTE J. CASTELLANO,)	
)	
Defendant.)	

STIPULATION OF FACTS

The United States of America, by and through its attorneys, W. Charles Grace, United States Attorney for the Southern District of Illinois, and Hal Goldsmith, Assistant United States Attorney for said District, along with the defendant, Monte J. Castellano (Castellano), and his attorney John O'Gara, enter into the following Stipulation of Facts consistent with Section 1B1.3 of the United States Sentencing Guidelines pertaining to the defendant's relevant conduct:

1. Defendant **MONTE J. CASTELLANO** is a Certified Public Accountant and the son of Joseph D. Castellano. Beginning during in or about November, 1996, **MONTE J. CASTELLANO** began employment at a construction company begun by his father, the Joseph Daniel Company, also known as J.D. & Company (hereinafter referred to as "J.D. & Company). Defendant **MONTE J. CASTELLANO** and his father would and did participate together in the exercise of authority and control over the day to day business and operating decisions of J.D. & Company. During February, 1997, defendant **MONTE J. CASTELLANO** and his father incorporated J.D. & Company in the State of Illinois. Defendant **MONTE J. CASTELLANO** and Joseph D. Castellano determined that defendant **MONTE J. CASTELLANO** should be the sole shareholder of J.D. & Company due to his father's previous personal bankruptcy.

2. J.D. & Company marketed, sold, and built new single family residences throughout the Metro East Illinois area, including Madison and St. Clair Counties, advertising low down payments and low closing costs. Interested individuals initially entered into construction contracts with J.D. & Company. J.D. & Company then developed an acceptable home design, assisted the customer in the preparation of a construction loan application, and referred the customer for a six month construction loan. When defendant **MONTE J. CASTELLANO** began his employment with J.D. & Company, the company, through his father Joseph D. Castellano, already had an established relationship with Old Exchange National Bank of Okawville (hereinafter referred to as "Old Exchange"), located in Okawville, Illinois. Old Exchange made construction loans to a number of J.D. & Company's new home customers. Old Exchange received a fee equal to 1% of the loan amount for making each construction loan.

3. J.D. & Company also had an established relationship, through Joseph D. Castellano, with Metro East Title Corporation (hereinafter referred to as "Metro East Title"). Metro East Title acted as an escrow and disbursing agent for Old Exchange relative to the bank's construction loans to J.D. & Company's new home customers, and Metro East Title issued title insurance to J.D. & Company's new home customers. Metro East Title received a fee equal to 1/2% of the loan amount for serving as disbursing agent, along with other fees for closing and issuing the title insurance.

4. In conjunction with each of J.D. & Company's construction contracts, the customer agreed to a construction loan disbursement schedule. This disbursement schedule allowed J.D. & Company to draw one-third of the customer's construction loan upon the closing of the construction loan, one-third of the customer's construction loan when the new home was "weather tight", and the final one-third of the customer's construction loan upon completion of construction. It was a further

part of the construction contract that the customer authorized J.D. & Company to make draws on the customer's construction loan, without the customer's prior approval and without giving the customer prior notice, "upon completed work" as set forth in the disbursement schedule.

5. In order to draw on each customer's construction loan, J.D. & Company, at the direction of defendant **MONTE J. CASTELLANO** and Joseph D. Castellano, sent via telephone facsimile transmission to Metro East Title a form entitled "Escrow Draw Borrower' Release". Through the use of these forms J.D. & Company, by and through the defendant **MONTE J. CASTELLANO** and Joseph D. Castellano, who signed these forms and, as part of the construction contract requested funds on behalf of each particular borrower, represented to Metro East Title that a particular stage of work was completed on the referenced customer's home such that Metro East Title, as disbursing agent, would authorize Old Exchange to disburse the appropriate construction loan funds. Once Old Exchange had disbursed the particular construction loan funds to a Metro East Title account, Metro East Title would then issue a check in that amount to J.D. & Company.

6. Defendant **MONTE J. CASTELLANO** and Joseph D. Castellano directed new home customers to Old Exchange for construction loans because they knew and believed that Old Exchange would not question J.D. & Company's construction loan draw requests, would not require lien waivers from subcontractors purportedly performing the construction work on the new homes, and would conduct only sporadic and rare inspections of the new home construction sites to verify work completion.

7. J.D. & Company, at the direction of defendant **MONTE J. CASTELLANO** and Joseph D. Castellano, put together the construction loan application packages for each new home customer and submitted the application packages to Old Exchange. In connection with the loan

application packages, and in order for Old Exchange to issue the construction loans, J.D. & Company, at the direction of defendant **MONTE J. CASTELLANO** and Joseph D. Castellano obtained pre-construction home appraisals for each new home customer. Defendant **MONTE J. CASTELLANO** and Joseph D. Castellano utilized Southwestern Illinois Real Estate Services to perform these appraisals because they knew and believed that each appraisal would reflect a home value 20% greater than the loan amount of the home.

Further, in connection with the loan application packages, and in order for Old Exchange to issue the construction loans, J.D. & Company, at the direction of defendant **MONTE J. CASTELLANO** and Joseph D. Castellano, requested and obtained commitments to issue permanent financing for each new home customer from companies including American Mortgage Group, Inc. of Belleville, Illinois.

Additionally, in connection with the loan application packages, and in order for Old Exchange to issue the construction loans, J.D. & Company, at the direction of defendant **MONTE J. CASTELLANO** and Joseph D. Castellano, requested and obtained credit reports for each new home customer from companies including Accurate Credit Services, Inc. of Largo, Florida.

Finally, in connection with the loan application packages, and in order for Old Exchange to issue the construction loans, J.D. & Company, at the direction of defendant **MONTE J. CASTELLANO** and Joseph D. Castellano, obtained Federal Emergency Management Agency Standard Flood Hazard Determination reports, commonly referred to as "Flood Letters", from companies including Horizon Certification Services of San Antonio, Texas and First American Flood Data Services, Inc. of Austin, Texas. Requests for these "Flood Letters" were sent by telephone facsimile transmission from J.D. & Company's offices to both Horizon Certification

Services' offices in San Antonio, Texas and First American Flood Data Services, Inc.'s offices in Austin, Texas. On or about February 19, 1999, a Flood Certification Request Form relative to a new home to be built for J.D. & Company customers John and Cynthia Palisch was sent by telephone facsimile transmission from the offices of J.D. & Company in Fairview Heights, Illinois to the offices of Horizon Certification Services in San Antonio, Texas, in order to obtain a "Flood Letter" in support of the Palisch's construction loan application at Old Exchange.

8. Defendant **MONTE J. CASTELLANO** and Joseph D. Castellano directed new home customers to Metro East Title for title services, including title insurance, escrow services, and disbursement services, because defendant **MONTE J. CASTELLANO** and Joseph D. Castellano knew and believed that Metro East Title would not question J.D. & Company's construction loan draw requests, would not require lien waivers from subcontractors purportedly performing the construction work on the new homes, and would not conduct periodic inspections of the new home construction sites to verify work completion.

9. Defendant **MONTE J. CASTELLANO** and Joseph D. Castellano falsely represented to customers that Metro East Title and Old Exchange would not disburse the customers' construction loan funds to J.D. & Company until Metro East Title and Old Exchange had verified that the appropriate stage of work had been completed when, in fact, as defendant **MONTE J. CASTELLANO** and Joseph D. Castellano well knew, neither Metro East Title nor Old Exchange took any steps to verify work completion before disbursing construction loan funds to J.D. & Company.

10. Defendant **MONTE J. CASTELLANO** and Joseph D. Castellano falsely represented on a number of "Escrow Draw Borrower" Release" forms that a particular stage of work was

completed on the referenced customer's home in order that Metro East Title, as disbursing agent, would authorize Old Exchange to disburse the construction loan funds. Defendant **MONTE J. CASTELLANO** and Joseph D. Castellano well knew that the representations made on these "Escrow Draw Borrower' Release" forms were false and that the represented stage of completion had not, in fact, been achieved. At the direction of defendant **MONTE J. CASTELLANO** and Joseph D. Castellano these "Escrow Draw Borrower' Release" forms were sent by telephone facsimile transmission from J.D. & Company's offices to the offices of Metro East Title in Belleville, Illinois. They were then sent by telephone facsimile transmission from the offices of Metro East Title to Old Exchange in Okawville, Illinois.

11. Defendant **MONTE J. CASTELLANO** and Joseph D. Castellano engaged in a *Ponzi* scheme, in that they utilized construction loan funds disbursed by Old Exchange and Metro East Title to J.D. & Company to pay subcontractors and material providers for work performed and materials supplied for previously constructed new homes, instead of for the specific new customers' homes the disbursed loan funds were actually intended for.

12. Defendant **MONTE J. CASTELLANO** and Joseph D. Castellano failed to pay subcontractors and material providers for work performed and materials supplied on J.D. & Company's new customers' homes, despite having received construction loan funds to make such payments.

13. Defendant **MONTE J. CASTELLANO** and Joseph D. Castellano misappropriated for personal use and unrelated business purposes construction loan funds which had been disbursed to J.D. & Company for the construction of customers' homes.

14. During in or about the week of September 27, 1999, defendant **MONTE J.**

CASTELLANO and Joseph D. Castellano closed the offices of J.D. & Company and fled to Florida from the Southern District of Illinois. At that time, defendant **MONTE J. CASTELLANO** and Joseph D. Castellano left approximately twenty-seven (27) customers' homes in various stages of completion, having already drawn down substantially all of the customers' construction loan funds, totaling approximately \$3,000,000.00. Defendants also owed approximately \$500,000.00 to subcontractors and material providers who had performed work and provided materials relative to these homes. Each of these customers had entered into construction contracts with J.D. & Company during 1999.

15. The parties agree that defendant **MONTE J. CASTELLANO's** overall relevant conduct consists of a total amount of loss in excess of \$2,500,000.00.

SO STIPULATED:

MONTE J. CASTELLANO
Defendant

HAL GOLDSMITH
Assistant United States Attorney

JOHN O'GARA
Counsel for Defendant

DATED this _____ day of April, 2001.